

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SCOTTSDALE INSURANCE COMPANY

Plaintiff,

– against –

PATRICK M. MCGRATH, AH DB KITCHEN
INVESTORS LLC, and CASTLEGRACE EQUITY
INVESTORS, LLC

Defendants.

PATRICK M. MCGRATH

Third-Party Plaintiff,

– against –

CRAVEABLE HOSPITALITY GROUP f/k/a
WATERSHED VENTURES, LLC

Third-Party Defendant.

Case No. 1:19-CV-07477 (LJL)

**STIPULATED CONDITIONAL FINAL JUDGMENT SUBJECT TO
RESERVATION OF RIGHTS OF APPEAL**

WHEREAS, on August 9, 2019, Plaintiff Scottsdale Insurance Company (“Scottsdale”) commenced this action (the “Action”) against Defendants Patrick M. McGrath (“McGrath”), AH DB Kitchen Investors LLC and Castlegrace Equity Investors, LLC (collectively with Scottsdale, the “Parties”) seeking a declaratory judgment that McGrath is not an Insured under Business and Management Indemnity Policy No. EKS 3172343 (the “Policy”) issued to Watershed Ventures LLC (“Watershed”).

WHEREAS, McGrath on October 22, 2019 filed an Answer and Counterclaims against Scottsdale.

WHEREAS, on December 11, 2020 the Court issued an Opinion and Order (the “First Order”) denying Scottsdale’s motion for summary judgment and holding that Rocky Aspen LLC was a subsidiary of Watershed as of the occurrence of the so-called “Watershed Option Triggering Events” on March 25, 2015 and McGrath was an Insured under the Policy from that time until his removal as co-manager of Rocky Aspen on January 5, 2016.

WHEREAS, on July 19, 2021 the Court issued an Opinion and Order (the “Second Order”, and collectively with the First Order, the “Summary Judgment Orders”) granting Scottsdale’s motion for partial summary judgment and dismissing McGrath’s Counterclaim Count II for bad faith breach of contract and prayers for consequential and punitive damages.¹

WHEREAS, on August 25, 2021 the Court entered an Order directing the Parties to be ready for trial on 48 hours’ notice beginning January 24, 2022.

WHEREAS, in order to avoid the expense and burden of a damages trial, while reserving Scottsdale’s and McGrath’s rights to appeal the Court’s Summary Judgment Orders, the Parties have agreed to enter into this Stipulated Conditional Final Judgment to affix the amount of damages on McGrath’s Counterclaim Count III for Scottsdale’s breach of its duty to defend and to permit the Parties to appeal the Summary Judgment Orders.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over the Parties hereto and over the subject matter at issue, and venue is proper in this District.

¹ In summarizing the First Order and Second Order herein, the parties do not intend to change the substance of those decisions of the Court in any way by means of this agreement and refer back to those Orders for a full and complete statement of the Court’s rulings.

2. In the interest of efficiency and judicial economy, Scottsdale and McGrath agree to stipulate to the amount of damages set forth in Paragraph 4 below and the award of attorneys' fees set forth in Paragraph 5 below in order to permit this case to proceed to an appeal of the Summary Judgment Orders. The relief ordered in Paragraphs 4 and 5 below is expressly conditioned on Scottsdale's and McGrath's reservation of their respective rights of appeal as set forth in Paragraph 3 below.

3. The Parties stipulate that Scottsdale and McGrath have expressly reserved their rights of appeal to challenge solely: (1) as to Scottsdale and the First Order, the Court's judgment that Rocky Aspen was a Subsidiary of Watershed as of May 25, 2015 on occurrence of the "Watershed Option Triggering Events" and the Court's finding that McGrath was an Insured as co-manager of Rocky Aspen from May 25, 2016 until his removal as co-manager on January 5, 2016; and, (2) as to McGrath and the Second Order, the Court's judgment dismissing McGrath's Counterclaim Count II for bad faith breach of contract and prayers for consequential and punitive damages. If either the First Order or the Second Order is reversed, reversed in part, or vacated and remanded, in whole or in part, then this Stipulated Conditional Final Judgment shall be void.

4. Subject to Paragraphs 2-3 above, the Parties stipulate that the amount of damages awarded to McGrath against Scottsdale on his Counterclaim Count III for breach of the duty to defend, together with pre-judgment interest, shall be One Million Dollars (\$1,000,000.00).

5. The Parties agree that McGrath, in addition to the damages and pre-judgment interest set forth in Paragraph 4, shall be awarded attorneys' fees in accordance with *Mighty Midgets, Inc. v. Centennial Ins. Co.*, 47 N.Y.2d 12 (1979) in the amount of Two Hundred Fifteen Thousand Dollars (\$215,000.00). Nothing contained herein shall have any effect on the right of McGrath to seek an award of attorneys' fees in connection with Scottsdale's appeal of this


Stipulated Conditional Final Judgment or any future proceedings in the District Court that may occur following the entry of this Stipulated Conditional Final Judgment. The Parties agree that costs (other than attorneys' fees) shall not be awarded.

6. This Court shall retain continuing jurisdiction over the Parties to this Stipulated Conditional Final Judgment and over the subject matter of this action for the purposes of interpreting or enforcing the terms of this Stipulated Conditional Final Judgment, subject to the Parties' rights of appeal set forth above.

7. Absent a decision on appeal reversing, reversing in part, or vacating and remanding, in whole or in part, either the First Order or the Second Order, the terms of this Stipulated Conditional Final Judgment shall be binding on the Parties.

8. This Stipulated Conditional Final Judgment shall be effective upon approval by the Court.

AGREED AS TO FORM AND SUBSTANCE:



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Executed on: September 22, 2021



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*Counsel for Defendants Patrick M. McGrath,
AH DB Kitchen Investors LLC and
Castlegrace Equity Investors, LLC*

Executed on: September 22, 2021

APPROVED AND ORDERED THIS 22 day of September, 2021

A handwritten signature in black ink, appearing to read "L. Liman", is written above a horizontal line.

Lewis J. Liman, U.S.D.J.

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